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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,469	03/17/2004	Masahiro Okajima	B-5403 621791-4	5471

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EXAMINER

METZMAIER, DANIEL S

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,469

Applicant(s)

OKAJIMA ET AL.

Examiner

Daniel S. Metzmaier

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1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004 & 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-4 are pending.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings were received on January 24, 2005. These drawings are acceptable.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Charlez et al, US 6,001,795. See column 10, lines 43-45; and examples 1A-1G, Table bridging columns 11 and 12.
5. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Bar-On et al, US 5,122,533. See examples and claims. Claim 1 sets forth pH values of up to

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12.5. Examples 1 and 2 set forth perfumes. The high pH set forth in the claims would read on the super-reductive water as strong alkali ionic water.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagasaku et al, US 2002/0036171 A1. See paragraph [0027].

7. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Yanagihara et al, US 2005/0170011 A1. Yanagihara et al (paragraphs [0124] to [0127], and [0135]) disclose the formation of emulsions employing super-reductive water in cosmetics and food compositions including ([0135]) fat emulsions. The pH of the emulsions set forth in Yanagihara et al would have been inherently alkaline in view of the use of the reductive water in their formation.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yanagihara et al, US 2005/0170011 A1, in view of Nagasaku et al, US 2002/0036171 A1, and Martin, US 4,368,188. Yanagihara et al (paragraphs [0124] to [0127], and [0135]) disclose the formation of emulsions employing super-reductive water in cosmetics and food compositions including ([0135]) fat emulsions.

Yanagihara et al differs from the claims in the explicit disclosure of the emulsion pH of 8-11 and or the addition of perfume.

Nagasaku et al (paragraph [0027]) disclose the fat emulsification properties of reductive water and the pH values of the water of 11 to 12.5.

Martin (column 1, lines 48-53; and example) discloses the formation of alkaline cosmetic toners, which may employ artificial oils, perfumes, and the like.

These references are combinable since they teach reductive water and methods of using said reductive water and/or cosmetic toner compositions as mentioned in Yanagihara et al and Martin. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ reductive water having a pH of 11 to 12.5 as conventional reductive water taught in the Nagasaku et al reference as having fat emulsification properties in the cosmetic and cosmetic toner compositions taught in the Yanagihara et al reference, resulting in a slightly lower pH value in the emulsion than the initial water.


Furthermore, it would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ reductive water taught in the Yanagihara et al reference in alkaline cosmetic toners employing artificial oils, perfumes, and the like as shown in the Martin reference.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM